

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RUSSELL ALLEN,

Petitioner,

-against-

MEMORANDUM AND ORDER

Case No. 13-CV-2129 (FB)

UNITED STATES OF AMERICA,

Respondent.

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Appearances:

For the Petitioner:

RUSSELL ALLEN, *Pro Se*

#74365-053

F.C.I. Talladega

PMB 1000

Talladega, AL 35160

For the Government:

LORETTA LYNCH

United States Attorney

Eastern District of New York

By: Amy Busa

Assistant United States Attorney

271 Cadman Plaza East

Brooklyn, NY 11201

BLOCK, Senior District Judge:

1 Russell Allen (“Allen”), proceeding *pro se*, seeks to amend his motion to
2 vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The Court
3 grants the motion to amend, and for the reasons stated below the amended motion is
4 denied.

5 **I.**

6 On June 3, 2008, Allen pleaded guilty before Magistrate Judge Viktor V.
7 Pohorelsky to one count of Racketeering, in violation of 18 U.S.C. § 1962(c), pursuant

1 to a plea agreement. Allen was involved in two murder-for-hire conspiracies
2 commissioned by his co-defendant, Kenneth McGriff. *See United States v. McGriff*,
3 287 F. App'x 916, 917 (2d Cir. 2008) (summary order). During his allocution, the
4 Court reviewed the charges, including the allegation that Allen committed two
5 racketeering acts: the murder of Eric Smith and the conspiracy to murder Troy
6 Singleton, both of which carried potential life sentences. Allen admitted his guilt for
7 the offenses.

8 II.

9 Allen seeks to modify his petition by moving to “withdraw ground[s] a to d of
10 [the] pending” petition, and then to add the new argument that “Counsel was
11 ineffective for failing to invoke *Apprendi v. New Jersey*, 530 U.S. 466 (2000) at
12 Sentencing.” Dkt. No. 11 (filed June 6, 2014).

13 *Apprendi* held that “any fact that increases the penalty for a crime beyond the
14 prescribed statutory maximum must be submitted to a jury, and proved beyond a
15 reasonable doubt.” 530 U.S. at 490. “[T]he ‘statutory maximum’ for *Apprendi*
16 purposes is the maximum sentence a judge may impose *solely on the basis of the facts*
17 *reflected in the jury verdict or admitted by the defendant.*” *Blakely v. Washington*,
18 542 U.S. 296, 303 (2004) (emphasis in original). A RICO defendant, like Allen, who
19 violates 18 U.S.C. § 1962 can be imprisoned “not more than twenty (20) years,”
20 unless the violation is based on a racketeering activity for which the maximum penalty

1 includes life imprisonment. 18 U.S.C. § 1963(a).

2 Here, there was no *Apprendi* violation because the facts that were the basis for
3 the statutory maximum were “admitted by the defendant.” *Blakely*, 542 U.S. at 303.

4 At his allocution, Allen admitted his involvement in both murders—crimes that carry
5 a maximum penalty of life imprisonment—and the Court sentenced him to 30 years
6 of imprisonment. Allen suffered no prejudice as a result of a decision not to raise a
7 claim lacking merit on his behalf, and therefore he fails to show that sentencing
8 counsel’s “representation fell below an objective standard of reasonableness.”
9 *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

10 **III.**

11 The petition, as amended, is denied. Because Allen has failed to make a
12 “substantial showing of the denial of a constitutional right,” a certificate of
13 appealability will not issue. 28 U.S.C. § 2253(c).

SO ORDERED.

/S/ Frederic Block _____
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
July 30, 2014